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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington

In the matter of:)	DOCKET NO. CWA-10-99-0186
)	
)	ADMINISTRATIVE COMPLAINT
Coleman Ranch, Inc.)	FOR CIVIL PENALTIES
St. Paul, Oregon,)	
)	Proposal to Assess Class II
)	Civil Penalties Under Section
Respondent.)	309(g)(2)(B) of the Clean
)	Water Act
_____)	

I. JURISDICTION

This Administrative Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA” or “Complainant”) by Section 309(g)(2)(B) of the Clean Water Act (“Act”), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10, who in turn has redelegated it to the Director, Office of Water. Pursuant to Section 309(g)(2)(B) of the Act, and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” which are set forth in 64 Fed. Reg. 40138 (July 23, 1999), and which are to be codified at 40 C.F.R. Part 22 (“Consolidated Rules of Practice”), Complainant hereby proposes the assessment of a civil penalty against Coleman Ranch, Inc. (“Respondent”) for the unlawful discharges of pollutants into navigable waters and for exceedance of the permitted number of cattle in violation of Section 301(a)

1 of the Act, 33 U.S.C. § 1311(a), and General Permit Number 0800 issued by the Oregon Department
2 of Environmental Quality.

3 **II. STATUTORY AUTHORITY AND FACTUAL BACKGROUND**

4 1. Section 402 of the Act, 33 U.S.C. § 1342, provides that a state with an approved National
5 Pollutant Discharge Elimination System (“NPDES”) program may issue permits for the discharge of
6 any pollutant into waters of the United States upon such specific terms and conditions as the state
7 may prescribe.

8 2. The Oregon Department of Environmental Quality (“ODEQ”) issues NPDES permits
9 pursuant to an NPDES program approved by EPA.

10 3. On October 8, 1990, ODEQ issued General Permit Number 0800 (“Permit”). In relevant
11 part, the Permit prohibits any “discharge or potentially harmful indirect discharge to state waters”
12 from any covered “confined animal feeding operation.”

13 4. The Permit also limits the maximum number of animals allowed to be confined to 575.

14 5. Respondent owns and operates a dairy farm located at 4499 Mahoney Road NE, St. Paul,
15 Oregon (“Farm”) which contains a concrete-surfaced animal confinement lot (“Facility”).

16 6. Respondent is a “person” within the meaning of Section 502(5) of the Act,
17 33 U.S.C. § 1362(5).

18 7. At all times relevant to this Complaint, Respondent had coverage under the Permit for the
19 Facility .

20 8. On February 9, 1999, EPA conducted an NPDES inspection of Respondent’s Farm.

21 9. At the time of the February 9, 1999, NPDES inspection, the Facility confined
22 approximately 879 heads of cattle. The number of cattle confined at the Facility is equivalent to at
23 least 1000 “animal units” as that term is defined in 40 C.F.R. Part 122, Appendix B.

24 10. The Facility stables or confines and feeds or maintains dairy cattle for a total of 45 days
25 or more in a 12-month period.

26 11. Neither crops, vegetation, forage growth, nor post-harvest residues are sustained during
27 the normal growing season over any portion of the Facility.
28

12. The Facility is a “concentrated animal feeding operation” as that term is defined in 40 C.F.R. Part 122, Appendix B and used in Section 502(14) of the Act, 33 U.S.C. § 1362(14).

13. The Facility is a “confined animal feeding operation” as that term is defined in O.R.S. § 468B.205.

Violation I

14. At the time of the February 9, 1999, NPDES inspection, manure-laden wastewater which originated from the manure dry stack area portion of the Facility was discharged into a nearby drainage ditch.

Violation II

15. At the time of the February 9, 1999, NPDES inspection, manure-laden wastewater which originated from the waste storage pond portion of the Facility was discharged into a nearby drainage ditch.

Violation III

16. At the time of the February 9, 1999, NPDES inspection, manure-laden wastewater which originated from the heifer waste storage area portion of the Facility was discharged into a nearby drainage ditch.

17. The water in the drainage ditch referenced in Paragraphs 14, 15, and 16 flows to the West Champoeg Creek which flows to the Champoeg Creek which flows to the Willamette River.

18. Manure is a “pollutant” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

19. The discharges of wastewater described in Paragraphs 14, and 15, and 16 entered “navigable waters” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and to “waters of the state” or “state waters” within the meaning of O.R.S. § 468B.005(8) .

20. The discharges of wastewater described in Paragraphs 14, 15, and 16 constituted three “discharges of pollutants” within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12), from a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

21. The discharges of wastewater described in Paragraphs 14, 15, and 16 did not result from a 25-year, 24-hour storm event.

22. The discharges of wastewater described in Paragraphs 14, 15, and 16 constituted three direct discharges or potentially harmful indirect discharges to navigable waters and therefore constituted three violations of Special Condition 1 of the Permit.

Violation IV

23. At the time of the February 9, 1999, NPDES inspection, Respondent confined approximately 879 cattle at its Facility. This exceeded the maximum number of animals allowed to be confined pursuant to Special Condition 4 of the Permit.

24. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondent is liable for the administrative assessment of civil penalties not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$137,500.

III. PROPOSED PENALTY

25. Based on the foregoing authority and allegations, Complainant hereby proposes issuance of a final order assessing administrative penalties against the Respondent, for the violations cited above, in the amount of FORTY-FOUR THOUSAND DOLLARS (\$44,000).

Violation I	\$11,000
Violation II	\$11,000
Violation III	\$11,000
<u>Violation IV</u>	<u>\$11,000</u>
Total	\$44,000

26. The proposed penalty amount was determined by Complainant after taking into account the nature, circumstances, extent, and gravity of the violations; Respondent's ability to pay, prior history of violations, degree of culpability, and economic benefit and savings resulting from the violations; and other appropriate factors, to the extent the information is available for such determinations.

27. The nature, circumstances, extent, and gravity of the violations described above are significant. The violations resulted in discharges of manure-laden dairy waste to waters of the United States. Dairy waste can contain bacterial and viral pathogens such as *Escherichia coli* (*E.*

1 coli) and salmonella as well as parasites such as cryptosporidium. Illnesses caused by these
2 microorganisms can result in gastroenteritis, fever, kidney failure, and even death. Dairy wastes are
3 also typically high in nutrients which can cause decreased oxygen levels in the receiving water.
4 These decreased oxygen levels can adversely impact many species of fish indigenous to the Pacific
5 Northwest during their developmental stages as well as at maturity. A permit limitation on the
6 number of animals that may be confined is related to the capacity of the facility to handle animal
7 waste. Exceedance of a limit on the maximum number of animals that may be confined therefore
8 increases the likelihood that a discharge of manure may occur.

9 28. Respondent realized an economic benefit by having avoided and/or delayed
10 implementation of waste management controls that would have ensured compliance with the
11 applicable requirements. Based on the information available to EPA regarding Respondent's
12 financial condition, Respondent appears able to pay the proposed penalty.

13 **IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

14 29. The rules of procedure governing this proceeding are known as the "Consolidated Rules
15 of Practice" and are set forth in 64 Fed. Reg. 40138 (July 23, 1999), to be codified at 40 C.F.R. Part
16 22. A copy of the Consolidated Rules of Practice accompanies this Complaint. Under these rules,
17 Respondent has the right to request a formal hearing to contest any material fact set forth in this
18 Complaint or to contest the appropriateness of the proposed penalty.

19 30. Where Respondent intends to contest any material fact upon which the Complaint is
20 based, to contend that the proposed penalty is inappropriate, or to contend that Respondent is entitled
21 to judgement as a matter of law, Respondent must file with the Regional Hearing Clerk within 30
22 days after service of the Complaint an original and one copy of a written Answer to the Complaint.
23 The address of the Regional Hearing Clerk is:

24 U.S. Environmental Protection Agency
25 1200 Sixth Avenue, ORC-158
26 Seattle, Washington 98101
Attn: Regional Hearing Clerk

27 31. Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain
28 each of the factual allegations that are contained in the Complaint with regard to which Respondent

1 has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so
2 states in its Answer, the allegation is deemed denied. The Answer shall also set forth: (1) the
3 circumstances or arguments that are alleged to constitute the grounds of any defense; (2) the facts
4 that Respondent disputes (and thus intends to place at issue in the proceeding); (3) the basis for
5 opposing any relief; and (4) whether Respondent requests a hearing. Failure of Respondent to admit,
6 deny, or explain any material factual allegation contained in the Complaint constitutes an admission
7 of the allegation. Respondent's failure affirmatively to raise in the Answer facts that constitute or
8 that might constitute the grounds of its defense may preclude Respondent, at a subsequent stage in
9 this proceeding, from raising such facts and/or from having such facts admitted into evidence at a
10 hearing.

11 32. A copy of the Answer and all other documents which Respondent files in this action
12 must be furnished to Adan Schwartz, Assistant Regional Counsel, the attorney assigned to represent
13 Complainant in this matter, and on any other party to this action. Mr. Schwartz' address is:

14 Office of Regional Counsel
15 U.S. Environmental Protection Agency, Region 10
16 1200 Sixth Avenue, ORC-158
Seattle, WA 98101

17 33. If requested by Respondent in its Answer, a hearing upon the issues raised by the
18 Complaint and Answer may be held. If, however, Respondent does not request a hearing in its
19 Answer, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a hearing if the Answer
20 raises issues appropriate for adjudication.

21 **V. FAILURE TO FILE AN ANSWER**

22 34. If Respondent fails to file an Answer within 30 days following service of the Complaint,
23 Respondent may be found in default. Default by Respondent constitutes, for purposes of the pending
24 proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's
25 right to contest such factual allegations, and may result in the assessment of the full civil penalty.
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1 **VI. QUICK RESOLUTION AND SETTLEMENT**

2 35. In accordance with Section 22.18 of the Consolidated Rules of Practice, Respondent may
3 resolve this action at any time after ten (10) days following the close of public comment on this
4 Complaint by mailing the proposed penalty in full to:

5 EPA Region 10 Hearing Clerk
6 P.O. Box 360903M
Pittsburgh, Pennsylvania 15251-6903

7 and by filing with the Regional Hearing Clerk a copy of the check.

8 36. Whether or not Respondent requests a formal hearing, Respondent may request an
9 informal settlement conference to discuss the facts of this case, the proposed penalty, and the
10 possibility of settlement. To request such a settlement conference, please contact Adan Schwartz,
11 Assistant Regional Counsel, at the address specified in Paragraph 32, above, or by telephone at (206)
12 553-0015. Settlement discussions do not relieve Respondent of the obligation to file a timely written
13 Answer (which is due within 30 days of receipt of this Complaint, unless EPA and Respondent agree
14 to a later date). At an informal conference with representatives of EPA, Respondent may comment
15 on the charges made in this Complaint, and Respondent may also provide whatever additional
16 information that it believes is relevant to the disposition of this matter, including: (1) actions
17 Respondent has taken to correct any or all of the violations herein alleged; (2) any information
18 relevant to EPA's calculation of the proposed penalty; (3) the effect the proposed penalty would have
19 on Respondent's ability to continue in business; and/or (4) any other special facts or circumstances
20 Respondent wishes to raise.

21 37. EPA has authority to modify the amount of the proposed penalty, where appropriate, to
22 reflect a settlement reached with Respondent in an informal conference. The terms of any settlement
23 that may be reached would be embodied in a written Consent Agreement and Consent Order. A
24 Consent Agreement and Consent Order signed by EPA and Respondent would be binding as to all
25 terms and conditions specified therein upon signature by the EPA Regional Administrator.

26 38. Neither assessment nor payment of an administrative civil penalty pursuant to Section
27 309(g) of the Act, 33 U.S.C. § 1319(g), shall affect the Respondent's continuing obligation to
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1 comply with the Clean Water Act, with every term and condition of any applicable NPDES permit,
2 and with any separate Compliance Order issued to Respondent under Section 309(a) of the Act, 33
3 U.S.C. § 1319(a), concerning the violations alleged herein.

4 39. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of
5 Practice prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually
6 related proceedings with the Administrator, the Environmental Appeals Board or its members, the
7 Regional Administrator, the Regional Judicial Officer, the Presiding Officer, or any other person
8 who is likely to advise these officials in the decision on the case.

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10 Dated this ___ day of _____, 1999

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12 _____
13 Randall F. Smith
14 Director
15 Office of Water
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CERTIFICATE OF SERVICE

Docket No. CWA-10-99-0185 and CWA-10-99-0186.

I certify that the foregoing “Administrative Complaint For Penalties” and “Request for Information and Compliance Order” was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered:

Mary Shillcutt, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Mail Stop ORC-158
Seattle, Washington 98101

Copy, together with a cover letter and copy of the Consolidated Rules of Practice, by certified mail, return receipt requested:

John F. Coleman, Registered Agent
Coleman Ranch, Inc.
4499 Mahoney Road NE
St. Paul, Oregon 97137

Dated: _____
Lydia Arneson
U.S. EPA Region 10